

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DEREK MORTLAND,) CASE NO.: _____

Plaintiff,) JUDGE _____

vs.) **COMPLAINT FOR INJUNCTIVE**
) **RELIEF AND DAMAGES:**

KZOO HOTEL PARTNERS, LLC,) **1ST CAUSE OF ACTION:** For Denial of
Defendant.) Access by a Public Accommodation in
) Violation of the Americans with Disability
) Act of 1990 (“Title III” and “ADA”),
) 42 U.S.C. §§ 12181 *et seq.*

) **2ND CAUSE OF ACTION:** For Denial of
) Access by a Public Accommodation in
) Violation of Michigan Persons with
) Disabilities Civil Rights Act M.C. L.
) 37.1301, *et seq.*

Plaintiff DEREK MORTLAND Complains of Defendant KZOO HOTEL PARTNERS,
LLC, and alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant’s property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of 1990 (“title III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*

2. Plaintiff DEREK MORTLAND is a person with physical disabilities who, on or
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 1

1 about April 20, 2021 through April 21, 2021, was an invitee, guest, patron, or customer at
2 Defendant's property, which houses a HILTON GARDEN INN hotel, located at 303 North Rose
3 Street, Kalamazoo, MI 49007. At said time and place, Defendant failed to provide proper legal
4 access to the property, which is a public accommodation and/or public facility. The denial of
5 access was in violation of both federal and Michigan legal requirements, and MORTLAND
6 suffered violations of his civil rights to full and equal access and was embarrassed and
7 humiliated.
8

9 **JURISDICTION AND VENUE:**

10
11 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
12 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.
13 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
14 nucleus of operative facts and arising out of the same transactions, are also brought under
15 parallel Michigan law, whose goals are closely tied with the ADA, including but not limited to
16 violations of the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*
17

18 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
19 founded on the facts that the real property which is the subject of this action is located in this
20 district, in the City of Kalamazoo, County of Kalamazoo, State of Michigan and that plaintiff's
21 causes of action arose in this district.
22

23 **PARTIES:**

24 5. Plaintiff DEREK MORTLAND is a "physically handicapped person," a
25 "physically disabled person," and a "person with physical disabilities." (Hereinafter the terms
26 "physically disabled," "physically handicapped" and "person with physical disabilities" are used
27 interchangeably, as these words have similar or identical common usage and legal meaning.)
28

1 MORTLAND is a “person with physical disabilities,” as defined by all applicable Michigan and
2 United States laws. MORTLAND requires the use of a wheelchair to travel about in public.
3 Consequently, MORTLAND is a member of that portion of the public whose rights are protected
4 by the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*

5
6 6. Defendant KZOO HOTEL PARTNERS, LLC, an Indiana limited liability
7 company, is the owner and operator, lessor and/or lessee, or agent of the owner, lessor and/or
8 lessee, of the building and/or buildings which constitute a public facility in and of itself,
9 occupied by a HILTON GARDEN INN hotel, a public accommodation, located at/near 303
10 North Rose Street, Kalamazoo, MI 49007, and subject to the requirements of Michigan state law
11 requiring full and equal access to public facilities pursuant to the Michigan Persons with
12 Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*, and subject to the Americans with
13 Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other
14 legal requirements referred to in this complaint.
15

16
17 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
18 lessee, and/or lessor, of said premises, and owns and operates the subject HILTON GARDEN
19 INN hotel as a public facility at/near 303 North Rose Street, Kalamazoo, MI 49007. The
20 business, a HILTON GARDEN INN hotel, is open to the general public and conducts business
21 therein. The business operating on said premises is a public accommodation subject to the
22 requirements of the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*
23

24 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
25 tenants/lessees and the owners and operators of the subject hotel, a public accommodation
26 located at/near 303 North Rose Street, Kalamazoo, MI 49007. As such, Defendant is jointly and
27 severally responsible to identify and remove architectural barriers pursuant to Code of Federal
28

1 Regulations section 36.201(b), which states in pertinent part:

2 **§ 36.201 General**

3 (b) Landlord and tenant responsibilities. Both the landlord
4 who owns the building that houses a place of public
5 accommodation and the tenant who owns or operates the place of
6 public accommodation are public accommodations subject to the
7 requirements of this part. As between the parties, allocation of
8 responsibility for complying with the obligations of this part may
9 be determined by lease or other contract.

10 CFR §36.201(b)

11 9. Plaintiff does not know the true names of Defendant, its business capacities, its
12 ownership connection to the property and business, nor their relative responsibilities in causing
13 the access violations herein complained of. Plaintiff is informed and believes that the Defendant
14 herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,
15 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,
16 of each of the other defendants, if any, and was at all times acting and performing, or failing to
17 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,
18 master, servant, employer, employee, representative, franchiser, franchisee, partner, and
19 associate, or such similar capacity, and with the authorization, consent, permission or ratification
20 of each of the other defendants, and is responsible in some manner for the acts and omissions of
21 the other defendants in legally causing the violations and damages complained of herein, and
22 have approved or ratified each of the acts or omissions of each other defendant, as herein
23 described.

24 **PRELIMINARY FACTUAL ALLEGATIONS:**

25 10. Defendant is the entity that is a public accommodation that owns, leases (or
26 leases to), or operates, a HILTON GARDEN INN hotel, located at 303 North Rose Street,
27 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 4

1 Kalamazoo, MI 49007. The HILTON GARDEN INN hotel and each of its facilities are places
2 “of public accommodation” subject to the requirements of the Americans with Disability Act of
3 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and the Michigan Persons with
4 Disabilities Civil Rights Act M.C.L 37.1301, *et seq.* On information and belief, said facility has
5 undergone “alterations, structural repairs and additions,” each of which has subjected the
6 HILTON GARDEN INN hotel to handicapped access requirements.
7

8 11. Plaintiff DEREK MORTLAND is a person with a disability. MORTLAND is a
9 “physically disabled person,” as defined by all applicable Michigan and United States laws.
10 MORTLAND is paralyzed and requires the use of a wheelchair for mobility and to travel in
11 public.
12

13 12. At all times referred to herein and continuing to the present time, Defendant
14 advertised, publicized and held out the HILTON GARDEN INN hotel as being handicapped
15 accessible and handicapped usable.
16

17 13. On or about April 20, 2021 through April 21, 2021, MORTLAND was an
18 invitee and guest at the subject HILTON GARDEN INN hotel, arriving for purposes of obtaining
19 lodging.
20

21 14. Upon his arrival, during his patronizing of the public accommodation, and upon his
22 exit of the facility, MORTLAND personally encountered architectural barriers which denied him
23 the full and equal access to the property.
24

25 15. Therefore, at said time and place, MORTLAND, who is a person with disabilities,
26 encountered the following inaccessible elements of the subject HILTON GARDEN INN hotel
27 which constituted architectural barriers and a denial of the proper and legally required access to a
28 public accommodation to persons with physical disabilities. By way of example and not as an

1 exhaustive inventory of Defendant's violations, the following barriers to access were personally
2 encountered by plaintiffs:

- 3 a. In the parking garage, the parking signs on Floor 2 are all mounted too low in violation of
4 2010 ADAS Section: 502.6.
- 5 b. In the parking garage, stalls on Floor 2 that could be designated as Van Accessible are
6 missing a sign identifying them as a van accessible stall in violation of 2010 ADAS
7 Section: 502.6.
- 8 c. In the parking garage, the running slope (long dimension) of the accessible parking stall
9 exceeds 2% in violation of 2010 ADAS Section: 502.4.
- 10 d. In the parking garage, the running slope of the access aisle (long dimension) exceeds 2%
11 in violation of 2010 ADAS Section: 502.4.
- 12 e. In the parking garage, the cross slope (short dimension) of the access aisle exceeds 2% in
13 violation of 2010 ADAS Section: 502.4.
- 14 f. In the parking garage, the running slope (long dimension) of the accessible parking stall
15 exceeds 2% in violation of 2010 ADAS Section: 502.4.
- 16 g. In the parking garage, the walkway to the elevators contains abrupt vertical edges and/or
17 variations over 1/4 inch in violation of 2010 ADAS Section: 303.3, 303.2.
- 18 h. In the parking garage, the accessible route between the building entrance and the
19 accessible parking has running slopes greater than 5% and has not been constructed as a
20 ramp (i.e. handrails, edge protection, etc.) in violation of 2010 ADAS Section: 403.3.
- 21 i. In the parking garage, the maneuvering clearance on the pull side of the walkway door
22 extends less than 18 inches on the latch side in violation of 2010 ADAS Section:
23 404.2.4.1.
- 24 j. In the parking garage, the maneuvering clearance on the pull side of the exterior door is
25 obstructed in violation of 2010 ADAS Section: 404.2.4.1.
- 26 k. In the parking garage, due to the lack of access at parking stalls, access aisles, slope of
27 accessible routes and lack of maneuvering clearance at doors and elevators, the building
28 entrance is not located on an accessible route from the parking garage in violation of
2010 ADAS Section: 206.2.1.
- l. As far as the walkway to the hotel, due to the lack of access at the walkway ramp, the
building entrance is not located on an accessible route from the parking garage in
violation of 2010 ADAS Section: 206.2.1.

- m. As far as the walkway to the hotel, the walkway ramp exceeds the maximum running slope (direction of travel) allowable of 8.33% in violation of 2010 ADAS Section: 405.2.
- n. At the Street Level Lobby Entry, the maneuvering clearance at the sliding door exceeds 2% slope in violation of 2010 ADAS Section: 404.2.4.4.
- o. In guest room 505, the door exceeds the maximum allowable opening force in violation of 2010 ADAS Section: 404.2.9.
- p. In guest room 505, the sign providing directional and information is noncompliant in violation of 2010 ADAS Section: 216.3.
- q. In guest room 505, compliant knee clearance is not provided at the night table between the beds in violation of 2010 ADAS Section: 306.3.3.
- r. In guest room 505, the clear floor space only allows for a forward approach and the clothes iron is out of reach range in violation of 2010 ADAS Section: 308.2.2.
- s. In guest room 505, the bathroom shelf is positioned too high for either a side or front approach in violation of 2010 ADAS Section: 308.2.1, 308.3.1.
- t. In guest room 505, the toilet is not located within the range allowed from the side wall or partition in violation of 2010 ADAS Section: 604.2.
- u. In guest room 505, the rear grab bar is too low in violation of 2010 ADAS Section: 609.4.
- v. In guest room 505, the side grab bar is too high in violation of 2010 ADAS Section: 609.4.
- w. In guest room 505, the toilet paper is not installed within the compliant range in violation of 2010 ADAS Section: 604.7.
- x. In guest room 505, the water and drain pipes under the lavatory are not adequately insulated in violation of 2010 ADAS Section: 606.5.
- y. In guest room 505, the grab bar is not positioned correctly in violation of 2010 ADAS Section: 609.4.
- z. In guest room 505, the grab bar is not the correct size in violation of 2010 ADAS Section: 609.2.1.
- aa. In guest room 505, the grab bar is not rounded, smooth and free of sharp or abrasive elements in violation of 2010 ADAS Section: 609.5.

bb. In guest room 505, the hand held sprayer unit is mounted above the required maximum height in violation of 2010 ADAS Section: 608.6.

cc. In guest room 505, the hose is not a minimum of 59 inches long in violation of 2010 ADAS Section: 608.6.

dd. In guest room 505, the hand held sprayer unit is not equipped with a non-positive on/off control in violation of 2010 ADAS Section: 608.6.

ee. In guest room 505, the shower head positioning fixture is not accessible because it requires tight grasping, pinching or twisting of the wrist in violation of 2010 ADAS Section: 309.4.

ff. In guest room 505, the operable parts of controls are not located on the back wall adjacent to the seat a maximum of 27 inches from the seat wall in violation of 2010 ADAS Section: 608.5.2.

gg. In guest room 505, the clearance in front of the shower is not compliant in violation of 2010 ADAS Section: 608.2.2.1.

hh. In guest room 505, the mirror is mounted too high in violation of 2010 ADAS Section: 603.3.

ii. In guest room 505, the side and rear grab bars are not the correct size in violation of 2010 ADAS Section: 609.2.

jj. In guest room 505, the side and rear grab bars are not rounded, smooth and free of sharp or abrasive elements in violation of 2010 ADAS Section: 609.5.

kk. In guest room 505, the lamp is not accessible because there is not adequate clear floor space for an approach in violation of 2010 ADAS Section: 305.3.

ll. In guest room 505, the lamp switch is not accessible because it requires tight grasping, pinching or twisting of the wrist in violation of 2010 ADAS Section: 309.4.

mm. In the breakfast area, there are no accessible dining surfaces in violation of 2010 ADAS Section: 226.1.

nn. In the breakfast area, the top of the dining surface is not within the compliant height range in violation of 2010 ADAS Section: 902.3.

oo. In the breakfast area, compliant knee and/or toe clearance is not provided in violation of 2010 ADAS Section: 306.2.1.

1 qq. In other guest rooms, upon information and belief, there are not enough accessible rooms
2 designed with mobility features in violation of 2010 ADAS Section: 224.2.

3 rr. In other guest rooms, upon information and belief, accessible guest rooms are not
4 dispersed among the various classes of sleeping accommodations in violation of 2010
5 ADAS Section: 224.5.

6 ss. In other guest rooms, upon information and belief, the vanity counter top spaces provided
7 are not comparable to non-accessible rooms in violation of 2010 ADAS Section:
8 806.2.4.1.

9 On personal knowledge, information and belief, other public facilities and elements too
10 numerous to list were improperly inaccessible for use by persons with physical disabilities.

11 16. At all times stated herein, the existence of architectural barriers at Defendant's
12 place of public accommodation evidenced "actual notice" of Defendant's intent not to comply
13 with the Americans with Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§
14 12181 *et seq.*, and the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et*
15 *seq.*, either then, now or in the future.

16 17. As a legal result of Defendant's failure to act as a reasonable and prudent public
17 accommodation in identifying, removing or creating architectural barriers, policies, practices and
18 procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered
19 damages as alleged herein.

20 18. As a further legal result of the actions and failure to act of Defendant, and as a
21 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
22 herein, MORTLAND was denied his civil rights to full and equal access to public facilities.
23 MORTLAND suffered a loss of his civil rights and his rights as a person with physical
24 disabilities to full and equal access to public facilities, and further suffered from personal
25 physical injury, shame, humiliation, embarrassment, anger, disappointment and worry,
26 expectedly and naturally associated with a person with physical disabilities being denied access,
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28

1 all to his damages as prayed hereinafter in an amount within the jurisdiction of this court.

2 19. On information and belief, construction alterations carried out by Defendant has
3 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND
4 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and the Michigan Persons with Disabilities Civil Rights
5 Act M.C.L 37.1301, *et seq.*
6

7 20. MORTLAND, as described herein below, seeks injunctive relief to require the
8 HILTON GARDEN INN hotel to be made accessible to meet the requirements of both Michigan
9 law and the Americans with Disabilities Act, whichever is more restrictive, so long as Defendant
10 operates and/or leases the HILTON GARDEN INN hotel as a public facility. Plaintiff seeks
11 damages for violation of his civil rights, from the date of his visit until such date as Defendant
12 brings the establishment into full compliance with the requirements of Michigan and federal law.
13

14 21. On information and belief, Defendant has been negligent in its affirmative duty
15 to identify the architectural barriers complained of herein and negligent in the removal of some
16 or all of said barriers.
17

18 22. Because of Defendant’s violations, MORTLAND and other persons with physical
19 disabilities are unable to use public facilities such as those owned and operated by Defendant on
20 a “full and equal” basis unless such facility is in compliance with the provisions of the
21 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
22 order from this court compelling Defendant to make the HILTON GARDEN INN hotel
23 accessible to persons with disabilities.
24

25 23. Plaintiff is informed and believes and therefore alleges that Defendant caused the
26 subject property to be constructed, altered and/or maintained in such a manner that persons with
27 physical disabilities were denied full and equal access to, within and throughout said facility of
28

1 the HILTON GARDEN INN hotel and were denied full and equal use of said public facility.
2 Further, on information and belief, Defendant has continued to maintain and operate said facility
3 in such conditions up to the present time, despite actual and constructive notice to such
4 Defendant that the configuration of the establishment and/or its building(s) are in violation of the
5 civil rights of persons with physical disabilities, such as plaintiff and the disability community.
6 Such construction, modification, ownership, operation, maintenance and practices of such public
7 facilities are in violation of law as stated in Americans with Disability Act of 1990 (“TITLE III”
8 AND “ADA”), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in the laws of Michigan.
9

10
11 24. On information and belief, the subject public facility of the HILTON GARDEN INN
12 hotel denied full and equal access to plaintiff and other persons with physical disabilities in other
13 respects due to noncompliance with requirements of the Michigan Persons with Disabilities Civil
14 Rights Act M.C.L 37.1301, *et seq.*

15
16 25. On personal knowledge, information and belief, the basis of Defendant’s actual
17 and constructive notice that the physical configuration of the facilities including, but not limited
18 to, architectural barriers constituting the HILTON GARDEN INN hotel was in violation of the
19 civil rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,
20 communications with invitees and guests, owners of other establishments and businesses, notices
21 Defendant obtained from governmental agencies upon modification, improvement, or substantial
22 repair of the subject premises and other properties owned by the Defendant, newspaper articles
23 and trade publications regarding the Americans with Disabilities Act and other access laws,
24 public service announcements, and other similar information. Defendant’s failure, under state
25 and federal law, to make the establishment accessible is further evidence of Defendant’s
26 conscious disregard for the rights of plaintiff and other similarly situated persons with
27
28

1 disabilities. The scope and means of the knowledge of Defendant are within Defendant's
2 exclusive control and cannot be ascertained except through discovery.

3 26. Plaintiff will return to the subject HILTON GARDEN INN hotel to
4 patronize the facility, if it is made fully accessible to a disabled person in a wheelchair, and to
5 also avail himself of the hotel's services.
6

7 29. Should the HILTON GARDEN INN hotel become accessible, MORTLAND will
8 visit it again because he will travel through Kalamazoo County, Michigan in Fall 2021 and
9 Spring 2022.
10

11 30. Furthermore, plaintiff intends to return to the HILTON GARDEN INN hotel as an
12 ADA tester on an annual basis beginning in 2022, to ascertain whether Defendant removed the
13 barriers to access which are the subject of this litigation.

14 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
15 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
16 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

17 31. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
18 the allegations contained in paragraphs 1 through 30 of this complaint.

19 32. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
20 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
21 protect:
22

23 some 43 million Americans with one or more physical or mental
24 disabilities; [that] historically society has tended to isolate and
25 segregate individuals with disabilities; [that] such forms of
26 discrimination against individuals with disabilities continue to be a
27 serious and pervasive social problem; [that] the nation's proper
28 goals regarding individuals with disabilities are to assure equality
of opportunity, full participation, independent living and economic
self-sufficiency for such individuals; [and that] the continuing
existence of unfair and unnecessary discrimination and prejudice
denies people with disabilities the opportunity to compete on an

1 equal basis and to pursue those opportunities for which our free
2 society is justifiably famous.

3 33. Congress stated as its purpose in passing the Americans with Disabilities Act of
4 1990 (42 U.S.C. §12102):

5 It is the purpose of this act (1) to provide a clear and
6 comprehensive national mandate for the elimination of
7 discrimination against individuals with disabilities; (2) to provide
8 clear, strong, consistent, enforceable standards addressing
9 discrimination against individuals with disabilities; (3) to ensure
10 that the Federal government plays a central role in enforcing the
11 standards established in this act on behalf of individuals with
12 disabilities; and (4) to invoke the sweep of Congressional
13 authority, including the power to enforce the 14th Amendment and
14 to regulate commerce, in order to address the major areas of
15 discrimination faced day to day by people with disabilities.

16 34. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),
17 Congress passed “Title III - Public Accommodations and Services Operated by Private Entities”
18 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
19 purposes of this title was:

20 (7) PUBLIC ACCOMMODATION - The following private
21 entities are considered public accommodations for purposes of this
22 title, if the operations of such entities affect commerce -

23 . . .

24 (A) an inn, hotel, motel, or other place of lodging ***;

25 42 U.S.C. §12181(7)(A).

26 35. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
27 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
28 privileges, advantages, or accommodations of any place of public accommodation by any person
who owns, leases, or leases to, or operates a place of public accommodation.”

36. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
42 U.S.C. §12182(b)(2)(a) are:

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

37. The acts of Defendant set forth herein were a violation of plaintiff's rights under the ADA, 42. U.S.C. §§ 12181 *et seq.*, and the Michigan Persons with Disabilities Civil Rights Act M.C.L 37.1301, *et seq.*, making available damage remedies.

38. The removal of the barriers complained of by plaintiff as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject HILTON GARDEN INN hotel pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the

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1 removal of all the barriers complained of herein together was not “readily achievable,” the
2 removal of each individual barrier complained of herein was “readily achievable.” On
3 information and belief, Defendant’s failure to remove said barriers was likewise due to
4 discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii);
5 42 U.S.C. §12182 (b)(2)(A)(i).
6

7 39. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
8 accomplishable and able to be carried out without much difficulty or expense.” The statute
9 defines relative “expense” in part in relation to the total financial resources of the entities
10 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
11 plaintiff complains of herein were and are “readily achievable” by the Defendant under the
12 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
13 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to
14 make the required services available through alternative methods which were readily achievable.
15
16

17 40. On information and belief, construction work on, and modifications of, the
18 subject HILTON GARDEN INN hotel occurred after the compliance date for the Americans
19 with Disabilities Act, January 26, 1992, independently triggering access requirements under Title
20 III of the ADA.
21

22 41. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
23 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
24 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
25 the basis of disability in violation of this title or has reasonable grounds for believing that he
26 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
27 use of the public facilities complained of herein so long as the premises and Defendant’s policies
28

1 bar full and equal use by persons with physical disabilities.

2 42. Per §308(a)(1) (42 U.S.C. 12188), “Nothing in this section shall require a person
3 with a disability to engage in a futile gesture if such person has actual notice that a person or
4 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
5 last section, plaintiff has not returned to Defendant’s premises since on or about April 20, 2021
6 through April 21, 2021, but alleges that Defendant has continued to violate the law and deny the
7 rights of plaintiff and of other persons with physical disabilities to access this public
8 accommodation. Pursuant to §308(a)(2), “In cases of violations of §302(b)(2)(A)(iv) . . .
9 injunctive relief shall include an order to alter facilities to make such facilities readily accessible
10 to and usable by individuals with disabilities to the extent required by this title.”
11

12 43. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
13 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
14 the Americans with Disabilities Act of 1990, including but not limited to an order granting
15 injunctive relief and attorneys’ fees. Plaintiff will seek attorneys’ fees conditioned upon being
16 deemed to be the prevailing party.
17

18 44. Plaintiff seeks damages pursuant to the Michigan Persons with Disabilities Civil Rights
19 Act M.C.L 37.1301, *et seq.*, which provide, within the statutory scheme, that a violation of the
20 ADA and/or Michigan’s accessibility standards is a violation of Michigan law.
21

22 Wherefore, plaintiff prays for relief and damages as hereinafter stated.
23

24 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
25 **IN VIOLATION OF THE MICHIGAN PERSONS WITH DISABILITIES CIVIL**
26 **RIGHTS ACT M.C.L 37.1301, ET SEQ.**

27 45. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
28 the allegations contained in paragraphs 1 through 44 of this complaint.

1 46. At all times relevant to this action, the HILTON GARDEN INN hotel and the
2 business therein, are “places of public accommodation” pursuant to M.C.L. 37.1301(a).

3 47. Defendant committed an unlawful act pursuant to M.C.L. 37.1302(a) by denying Plaintiff
4 his full and equal enjoyment of its goods, services, accommodations, advantages, facilities, or
5 privileges at its place of public accommodation because of a disability, as prohibited by M.C.L.
6 37.1302.

7 48. Plaintiff has desired and attempted to enjoy the goods and services at the HILTON
8 GARDEN INN hotel as a customer. He has been prevented from doing so do to the existing
9 architectural barriers at the property. As a result, he has been distressed and inconvenienced
10 thereby, and is entitled to monetary damages for his injuries, as provided for in M.C.L. 37.1606.

11 49. As a result of being denied full access to the property, Plaintiff has suffered, and will
12 continue to suffer, emotional distress, humiliation, anxiety, anger, a loss of enjoyment of life, and
13 other consequential and incidental damages.

14 50. Pursuant to Michigan law, plaintiff is entitled to compensatory damages, and
15 attorney fees and costs, in an amount to be determined at trial, but in any event not less than
16 \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full and equal
17 enjoyment of its goods, services, facilities, privileges, and advantages to disabled persons.

18 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

19 **PRAYER:**

20 Wherefore, Plaintiff DEREK MORTLAND prays that this court grant relief and damages
21 as follows:

22 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
23 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
24 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

1 1. For injunctive relief, compelling Defendant to make HILTON GARDEN INN
2 hotel, readily accessible to and usable by individuals with disabilities; and to make reasonable
3 modifications in policies, practice, eligibility criteria and procedures so as to afford full access to
4 the goods, services, facilities, privileges, advantages and accommodations being offered.
5

6 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
7 the prevailing party; and

8 3. For such other and further relief as the court may deem proper.

9 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
10 **EQUAL ACCESS IN VIOLATION OF THE MICHIGAN PERSONS WITH**
11 **DISABILITIES CIVIL RIGHTS ACT M.C.L 37.1301, ET SEQ.**

12 4. For injunctive relief, compelling Defendant to make the HILTON GARDEN INN
13 hotel, readily accessible to and usable by individuals with disabilities, per state law.

14 5. General and compensatory damages according to proof;

15 6. All damages for each day, from the inception of the filing of this complaint, on
16 which Defendant have failed to remove barriers which denied plaintiff and other persons with
17 disabilities full and equal access.
18

19 7. Attorneys' fees pursuant to Michigan law, if plaintiff is deemed the prevailing
20 party;
21

22 8. For all costs of suit;

23 9. Prejudgment interest pursuant to Michigan law; and

24 10. Such other and further relief as the court may deem just and proper.
25

26 Respectfully submitted,

27 BLAKEMORE, MEEKER & BOWLER CO., L.P.A.

28 /s/ COLIN G. MEEKER

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